

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE:

February 27, 2024

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Mirella Craigo, 915-212-1617
Karina Brascalla, 915-212-1570

DISTRICT(S) AFFECTED:

All

STRATEGIC GOAL:

1. Cultivate an Environment Conducive to
Strong, Economic Development

SUBGOAL:

1.1 Stabilize and expand El Paso's tax base

SUBJECT:

A Resolution authorizing the City Manager to sign an Agreement Regarding Mutual Cooperation (the "Agreement") between the CITY OF EL PASO (the "CITY"), and the PASO DEL NORTE COMMUNITY FOUNDATION (the "PDNCF"), a non-profit 501(c)(3) organization in El Paso, Texas (collectively, the "Parties") to coordinate the Business One Stop Shop (BOSS) Program (the "Program") to provide comprehensive support to small and micro-business owners, entrepreneurs, and provide a not-for-profit vehicle for gifts from private and other donors for the benefit of the BOSS Program for a term of five (5) years and shall automatically renew for successive additional one (1) year periods.

BACKGROUND / DISCUSSION:

The American Rescue Plan Act of 2021 (ARPA) is a \$1.9 trillion stimulus bill passed by the US Congress and signed by President Joe Biden in March of 2021. The bill was a response to the COVID-19 Pandemic and sought to speed the United States' recovery by addressing both the health and economic impacts of the pandemic. The City of El Paso received \$154,365,135 from the ARPA bill and on May 14, 2022, City Council approved the allocation of \$14M to small business recovery and relief.

The Paso del Norte Community Foundation (PDNCF), governed by a dedicated 14-member volunteer board of directors, is a 501(c)(3) nonprofit organization. Their commitment lies in advancing the philanthropic objectives of individuals, families, corporations, foundations, and nonprofit entities. With a vision firmly rooted in our mission and values, they strive to enhance the well-being of the Paso del Norte region. Their focus areas encompass improvements in health, education, social services, economic development, and overall quality of life.

This MOU will serve to identify the roles and responsibilities that the PDNCF has as a fiscal agent to facilitate the receipt of grants and donations from outside entities for the Business One Stop Shop Program (BOSS). The BOSS is intended to reshape community perspectives on business development and support businesses of all sizes for growth and sustainability. The Foundation will have the right to transfer funds up to 1% from the restricted fund to its general fund covering administrative fees and other necessary expenses in accordance with the annual budget submitted by the City, ensuring the effective administration of the BOSS Program.

PRIOR COUNCIL ACTION:

On May 14, 2022, City Council approved the allocation of \$14M to small business recovery and relief.

AMOUNT AND SOURCE OF FUNDING:

Grant Funded

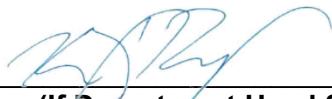
HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? ☒ YES ☐ NO

PRIMARY DEPARTMENT: Economic and International Development

SECONDARY DEPARTMENT:

*******REQUIRED AUTHORIZATION*******

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an Agreement Regarding Mutual Cooperation (the "Agreement") between the **CITY OF EL PASO** (the "CITY"), and the **PASO DEL NORTE COMMUNITY FOUNDATION** (the "PDNCF"), a non-profit 501(c)(3) organization in El Paso, Texas (collectively, the "Parties") to coordinate the Business One Stop Shop (BOSS) Program (the "Program") to provide comprehensive support to small and micro-business owners, entrepreneurs, and provide a not-for-profit vehicle for gifts from private and other donors for the benefit of the BOSS Program for a term of five (5) years and shall automatically renew for successive additional one (1) year periods.

APPROVED by the City Council of El Paso on this _____ day of _____
2024.

THE CITY OF EL PASO, TEXAS:

Oscar Lesser
Mayor


ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:


Oscar Gomez
Assistant City Attorney

APPROVED AS TO CONTENT:


Karina Brasgalla, Interim Director
Economic and International Development

AGREEMENT REGARDING MUTUAL COOPERATION

THIS AGREEMENT REGARDING MUTUAL COOPERATION (this "Agreement") is entered into on _____ day of _____, 2024 (the "Effective Date") by and between the CITY OF EL PASO, a home rule municipality (the "City"), and **PASO DEL NORTE COMMUNITY FOUNDATION** (the "PDNCF"), a non-profit 501(c)(3) organization in El Paso, Texas (collectively, the "Parties").

WHEREAS, to strategically continue the support of the Entrepreneurial Support Organization (ESO) Networks collective impact within the community, it is essential to design a comprehensive strategy that leverages the impact of the funds that were received from the American Rescue Plan Act 2021 (ARPA).

WHEREAS, the City has established the Business One-Stop Shop (BOSS) Program ("the Program") aimed at providing comprehensive support to small and micro-business owners, entrepreneurs, and foreign direct investors in partnership with a coalition of twenty (20) Program Partners. The Program is designed to catalyze access to business services and financing in El Paso County, transform community-wide perceptions on business creation, retention and expansion, and support businesses of all sizes to make better-informed decisions on growth and sustainability;

WHEREAS, the Program sustainability strategy includes diversifying funding sources through private foundations and corporate sponsorships, introducing fee-based services for specialized offerings, investing in grant writing and fundraising efforts, seeking partnership and sponsorship opportunities, advocating for continued City and County support, conducting program evaluation and reporting, exploring revenue-sharing agreements, and fostering community engagement and support;

WHEREAS, the City desires to partner with the PDNCF in furtherance of the Program;

WHEREAS, the PDNCF is a non-profit 501(c)(3) organization established to support the philanthropic goals of individuals, families, corporations, foundations and nonprofit organizations to improve health, education, social services, economic development and quality of life in the Paso del Norte region;

WHEREAS, in order to better accomplish the goals listed above, it will be beneficial for the Parties to outline their goals and objectives as described herein.

NOW, THEREFORE, the City and the PDNCF agree as follows:

1. **Initial Term and Automatic Renewals.** Unless terminated sooner as provided in this Agreement, the term of this Agreement shall be for a period five (5) years from the Effective Date (the "Term") and shall automatically renew for successive additional one (1) year periods

unless either party provides written notice to the other of their decision not to renew at least sixty (60) days prior to the expiration of any Term.

2. **Agreements by the PDNCF.** Until the expiration of the Term of this Agreement or the earlier termination of thereof, the PDNCF hereby agrees to use commercially reasonable efforts to:

- a. Establish the BOSS Program Fund ("the Fund"), a restricted 501(c)(3) fund in the PDNCF, to receive gifts, grants, contributions and other revenue and incur liabilities to support the purposes of the Program.
- b. Have the right to transfer funds from the restricted fund to the PDNCF's general fund for administrative fees, not to exceed 1%, necessary for the proper administration of the Program, all in accordance with an annual budget submitted by the City.
- c. Understand that, in interfacing with the City, any agreements PDNCF may enter into in furtherance of providing on-going financial support to the Program; may be subject to the City requesting assistance to assure financial transparency and disclosure in order to address accounting and audit concerns as may arise.

Notwithstanding any of the foregoing to the contrary, in no event shall the PDNCF be required to take any action or refrain from taking any action that may, in the PDNCF's sole discretion, cause the PDNCF to be in violation of applicable Internal Revenue Code rules or regulations or other applicable law.

3. **Agreements of the City and the PDNCF.** Until the expiration of the Term of this Agreement or the earlier termination thereof, the City agrees to use commercially reasonable efforts to:

- a. Allow the PDNCF to use any creative design, logos, photography or other intellectual property and business or branding, which may be owned by the City, BOSS, Economic Development or its agents or assignees for purposes of continuity and association between the City, the PDNCF and the Program.
- b. The City may not spend or otherwise obligate the PDNCF to pay for an amount or amounts exceeding the balance in Fund.
- c. The Parties agree that all money and the fair market value of all property in the Fund, and all income derived therefrom, shall be reported as belonging to the PDNCF, on the PDNCF's financial statements, and tax returns. It is the intent of the Parties that this Agreement be interpreted to grant the PDNCF with variance power and enable the PDNCF to treat the Fund as the PDNCF's asset in accordance with Accounting Standards Codification (ASC) paragraphs ASC

958-605-25-25 and -26, formerly expressed in Statement No. 136 issued by the Financial Accounting Standards Board (FASB).

- d. Unless otherwise agreed in writing, any tangible or intangible property, including intellectual property, such as copyrights, obtained from third parties or created in connection with the Program shall be the property of the City, held for the charitable purposes of the Program.

4. **Recognition of Joint Efforts.** During the term of this Agreement, the City and the PDNCF agree to acknowledge the joint efforts of each other during presentations to third parties. Additionally, for all projects wherein the City and the PDNCF are working together under this Agreement, printed and online materials shall contain a reference to such relationship with language such as "presented jointly by the City and the PDNCF" or such other language as the parties may reasonably agree to in writing.

5. **Termination and Amendments.**

- a. Either Party may terminate this Agreement at any time upon thirty (30) calendar days' advance written notice to the other Party.
- b. Unless the Agreement is terminated sooner as provided above, or the Parties amend the Agreement in advance of termination, this Agreement will renew automatically upon the expiration of the Term for successive additional one (1) year periods unless either party provides written notice to the other of their decision not to renew at least sixty (60) days prior to the expiration of any Term.
- c. This Agreement may be amended or extended by the written authority of the City Manager.

6. **Disputes and Cure Rights.** The PDNCF and the City agree to use good faith efforts to resolve any breaches of this Agreement or any disputes regarding the subject matter and transactions contemplated by this Agreement through mediation or other non-binding alternate dispute resolution processes before exercising the termination rights set forth in Section 5 so long as the City is not required to incur any financial obligation for participation in mediation or other non-binding alternate dispute resolution processes. If the Parties' good faith efforts to resolve any breaches of this Agreement or any disputes regarding the subject matter and transactions contemplated by this Agreement through mediation or other non-binding alternate dispute resolution processes shall be unsuccessful after a period of thirty (30) days, the Parties agree that the sole remedy therefor shall be to exercise the termination rights set forth in Section 5.

7. **Notices.** With respect to any notice required or permitted to be given in connection with Agreement (a "Notice"), such Notice shall be deemed received three (3) days after deposit of such Notice in the United States Certified Mail, return receipt requested, postage pre-paid, or on the day of delivery, when delivered personally, to the addresses and parties provided below:

To the City: The City of El Paso
Attn: City Manager
300 N. Campbell
El Paso, Texas 79901

With Copy to: Economic and International Development Department
Attn: Director
123 W. Mills Ave. Suite 111
El Paso, Texas 79901

PDNCF: Paseo del Norte Community Foundation
Attn: CEO
221 N. Kansas Street, Suite 1900
El Paso, Texas 79901

8. **Modification of this Agreement.** This Agreement may be modified only by written agreement by the Parties.

9. **Assignment.** The Parties may not assign any obligations or rights under this Agreement without the express written consent of the other Party.

10. **No Joint Enterprise.** This Agreement does not create any joint enterprise between the Parties.

11. **Independent Contractors.** The City and the PDNCF are independent legal entities. Nothing in this Agreement creates the relationship of employer and employee, principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. Neither the City nor the PDNCF nor any of their respective agents or employees has control or the right to control the activities of the other Party in carrying out the terms of this Agreement. Both Parties agree that neither Party has, nor will attempt to assert, authority to make commitments for or to bind the other Party to any obligation other than the obligations described in this Agreement.

12. **Headings.** The paragraph or section headings contained in this Agreement are for reference purposes only and do not control the meaning or interpretation of this Agreement.

13. **Expenditures.** Each Party to this Agreement is responsible for the costs associated with such Party's exercise of any rights or performance of any duties under this Agreement.

14. **Texas Public Information Act.** City is a political subdivision of the State of Texas and is governed by the Texas Public Information Act, Chapter 552, Texas Government Code. The Parties acknowledge and agree that City shall only be obligated to perform its duties under this Agreement

in compliance with the Public Information Act. To the extent to which some duties hereunder are not in conformity with the requirements of the Public Information Act, City shall be relieved of said duties without penalty or further liability. In the event that City receives a request, pertaining to this Agreement or information resulting from this Agreement, under the Public Information Act for Confidential Information it shall immediately notify PDNCF and confer on whether disclosure should be opposed. It is expressly agreed that City may request a determination from the Attorney General of the State of Texas in regard to the application of the Public Information Act to the requested information and whether the information is to be made available to the public. PDNCF may be asked to support such requests for determination by the Attorney General. It is further agreed that City, its officers and employees shall have the right to rely on the determinations of the Texas Attorney General, and that City, its officers and employees shall have no liability to PDNCF for disclosure to the public in reliance on a decision by the Attorney General. Nothing in this agreement shall require City or PDNCF to violate the terms of the Public Information Act.

15. **Governmental Function.** The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.

16. **Complete Agreement.** This Agreement constitutes and expresses the entire agreement between the Parties hereto in reference to the services and agreements herein described.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be constitute one and the same agreement. Delivery of an executed counterpart to this Agreement by Portable Document Format (.pdf file) attachment through electronic mail or other electronic means shall be effective as an original.

18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

19. **Severability.** If a court of competent jurisdiction finds any term of this Agreement to be illegal, invalid, or unenforceable, such term shall be excluded to the extent of such illegality, invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the illegal, invalid or unenforceable term shall be deemed replaced by a term that is legal, valid and enforceable and that comes closest to expressing the intention of such illegal, invalid or unenforceable term.

[Signatures begin on the following page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on this ____ day of _____ 2024.

THE CITY OF EL PASO, TEXAS:

Cary Westin
Interim City Manager

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:

Oscar Gomez
Assistant City Attorney

APPROVED AS TO CONTENT:

Karina Brasgalla, Interim Director
Economic and International Development

ACKNOWLEDGMENT

THE STATE OF TEXAS §

§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this ____ day of _____, 2024, by
Cary Westin, as Interim City Manager of the City of El Paso, Texas.

Notary Public, State of Texas My commission expires: I I

[Signatures continue on the following page]

PASO DEL NORTE COMMUNITY FOUNDATION:

By: *[Signature]*

Name: Tracy J. Yellen

Title: CEO

ACKNOWLEDGMENT

STATE OF §

COUNTY OF §

This instrument was acknowledged before me on the 7th day of February, 2024, by Joce Lynn Mireles as Notary of the **Paso Del Norte Community Foundation**.

[Signature]
Notary Public, State of

My Commission Expires:

12-12-27

